



July 1, 1999

Mr. John Steiner
Division Chief
Law Department
City of Austin
P.O. Box 1088
Austin, Texas 78767-1088

OR99-1840

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 125409.

The City of Austin (the "city") received a request for a letter drafted by Chief of Police Stanley L. Knee and information related to that letter. You have supplied the responsive information to this office for review, asserting that it is excepted from disclosure by sections 552.103 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state or a political subdivision is or may be a party. The governmental body claiming this exception has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). You must meet both prongs of this test for information to be excepted under section 552.103(a).

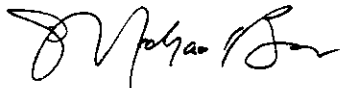
To demonstrate that litigation is reasonably anticipated, the governmental body must furnish *concrete* evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture; the mere chance of litigation will not establish the litigation exception. Open Records Decision No. 452 at 4 (1986). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *Id.* This office has concluded that litigation was reasonably anticipated when the potential opposing party took the following objective steps toward litigation: filed a complaint with the Equal Employment Opportunity Commission, *see* Open Records Decision No. 336 (1982); hired an attorney who made a demand for disputed payments and threatened to sue if the payments were not made

promptly, *see* Open Records Decision No. 346 (1982); and where a potential party threatened to sue on several occasions and hired an attorney, *see* Open Records Decision No. 288 (1981). We have also held that litigation was reasonably anticipated when a governmental body received a claim letter that it represents to this office to be in compliance with the notice requirements of the Texas Tort Claims Act, Civ. Prac. & Rem. Code ch. 101, or applicable municipal ordinance. Open Records Decision No. 638 (1996). In this case, you have received two letters from attorneys representing the requestor. You refer to one as the "notice of claim." You do not represent that this letter satisfies the notice requirements of the Texas Tort Claims Act, or applicable municipal ordinance, but we note that this letter purports to give notice "before suit is filed" and makes a money demand. The second letter states that the Texas Torts Claims Act and the federal Civil Rights Act are the legal basis for "potential claims" by the requestor. We conclude that you have demonstrated a reasonable anticipation of litigation in this matter. From our review of the responsive information we conclude that it is related to the anticipated litigation and may therefore be withheld under section 552.103(a) of the Government Code.

In reaching this conclusion, however, we assume that the opposing party to the anticipated litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). If the opposing parties in the anticipated litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). We also note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982)

Because section 552.103 is dispositive of the responsive information we shall not address your argument under section 552.107. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref: ID# 125409

Encl. Submitted documents

cc: Mr. Rick Cockman
420 Village Lane
Buda, Texas 78610
(w/o enclosures)